

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MOUNTAIRE FARMS, INC.
Employer

and

Case 05-RD-256888

OSCAR CRUZ SOSA
Petitioner

and

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 27, a/w UNITED FOOD AND
COMMERCIAL WORKERS INTERNATIONAL
UNION, AFL-CIO
Union

NOTICE AND INVITATION TO FILE BRIEFS

On June 23, 2020, the Board granted the Union's request for review of the Regional Director's Decision and Direction of Election, finding that it raised substantial issues warranting review, and indicated that it would establish a schedule for the filing of briefs on review and inviting *amicus* briefs.¹

The question presented in this case is whether the petition is barred from being processed at this time by the Board's contract-bar doctrine, under which the Board will generally decline to process an election petition that is filed during the term of a collective-bargaining agreement, for a period of up to three years. *Silvan Industries*, 367 NLRB No. 28 (2018). The contract-bar doctrine was developed by the Board "to balance the statutory goal of promoting labor relations stability against its statutory responsibility to give effect to employees' wishes concerning representation." *Id.*, slip op. at 3. Here, the Petitioner asks the Board to overrule or narrow the scope of the contract-bar doctrine, claiming that the doctrine impinges on employee free choice.

To aid in the consideration of this issue, the Board now invites the filing of briefs by parties and interested *amici* in this case. In addition to the specific contract-bar issue presented in this case, parties and *amici* should address, with supporting arguments, whether the Board should (1) rescind the contract-bar doctrine, (2) retain it as it currently exists, or (3) retain the doctrine with modifications.

¹ In its June 23 order, the Board also stayed the election. On June 24, the Board granted the Employer's and the Petitioner's requests for extraordinary relief and rescinded the stay, while impounding the ballots pending resolution of the merits of the Union's request for review and reiterating its intent to issue an order soliciting briefing. On June 29, the Board denied the Union's motion to reconsider the June 24 order.

With respect to (3), the parties are invited to specifically address the following, in addition to any other issues raised: the formal requirements for according bar quality to a contract, the circumstances in which an allegedly unlawful contract clause will prevent a contract from barring an election, the duration of the bar period during which no question of representation can be raised (including the operation of the current “window” and “insulated” periods), and how changed circumstances during the term of a contract (including changes in the employer’s operation, organizational changes within the labor organization, and conduct by and between the parties) may affect its bar quality.

Briefs by the parties not exceeding 50 pages in length and conforming to the requirements of Board Rule 102.67(i) and briefs by *amici* not exceeding 30 pages shall be filed with the Board in Washington, D.C., on or before August 6, 2020 and September 8, 2020, respectively.

The parties may file responsive briefs on or before September 22, 2020, which may not exceed 25 pages in length. The parties and *amici* shall file briefs electronically by going to www.nlr.gov and clicking on “eFiling.” Parties and *amici* are reminded to serve all case participants. A list of case participants may be found at <http://www.nlr.gov/case/05-RD-256888> under the heading “Participants.” If assistance is needed in E-Filing on the Agency’s website, please contact the Office of the Executive Secretary at 202-273-1940.

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., July 7, 2020.